STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 88272-001**

v

Blue Care Network of Michigan
Respondent
_____/

Issued and entered
This 12th day of May 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On March 3, 2008, XXXXX, on behalf of her minor son XXXXXl (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation (Commissioner) under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. On March 10, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

Petitioner's coverage is provided under the Blue Care Network BCN1 certificate of coverage (Certificate). Because the case required analysis by a medical professional, the Commissioner assigned it to an independent review organization which submitted its recommendation to the Commissioner on April 3, 2008.

II
FACTUAL BACKGROUND

The Petitioner is three years old and has a history of Down syndrome. He has received treatment from a speech and language pathologist for severe verbal apraxia, reduced oral muscle tone and strength, and for receptive and expressive language disorder. Respondent

provided coverage for speech therapy in 2007 but denied coverage for additional therapy in 2008. Petitioner appealed the denial unsuccessfully through Respondent's internal grievance process and received Respondent's final adverse determination letter dated February 22, 2008.

III
ISSUE

Did BCN properly deny the Petitioner coverage for speech therapy?

IV
ANALYSIS

Petitioner's Argument

The Petitioner's mother says that, after having specialized speech therapy with speech-language pathologist XXXXX in 2007, her son has made progress. In 2008, it was determined by his speech therapist and PCP that therapy was still medically necessary. The PCP requested coverage for the additional therapy. BCN denied the request saying Petitioner's condition is chronic therefore speech therapy is excluded.

Petitioner's mother says that BCN claims they do not pay for chronic conditions but the Certificate says that speech therapy is covered for severe cases up to age six. She quotes BCN's medical policy as saying, "Speech therapy is not covered for chronic conditions or developmental speech abnormalities except as provided under the BCN 1 certificate." She then contends that her son does meet all BCN's requirements.

She says her son's primary care physician and his speech language pathologist say he is improving with XXXXX treatment and that it should continue. In a March 19, 2008, progress note XXXXX noted:

> Continuation of Petitioner's clinical treatment program is strongly recommended. He is making some breakthroughs at this time with regard to his verbal imitative skills. He requires an intensive individualized approach due to his severe motor speech difficulties as well as parent training. Early intervention is extremely important. The parents have been excellent in following the home program effectively. The parents observe and videotape each session so that treatment techniques can be learned and applied within the home environment for maximal gains.

> It is recommended that treatment goals remain the same as above with emphasis on increasing consistency and accuracy.

The Petitioner's mother argues that weekly specialized sessions with XXXXX are medically necessary because Petitioner's school only has two or three speech therapists for approximately 300 students who range in age from 3 to 26. Any speech therapy he gets is in a group of nine students, once or twice a week with no consistent one-on-one therapy provided.

Respondent's Argument

In its final adverse determination, BCN wrote that its denial "was based on the identification that [Petitioner's] condition is chronic. . . . [T]he requested services do not meet our medical policy criteria, as speech therapy for chronic conditions or developmental speech abnormalities is excluded from coverage."

Commissioner's Review

Analysis begins with the insurance contract, in this case the BCN 1 Certificate. The Certificate's coverage for speech therapy is found in section 1.14:

> ***1.14 PHYSICAL THERAPY AND REHABILITATION SERVICES***
>
> We cover medically necessary short-term outpatient physical therapy and medical rehabilitation services, including speech therapy, when authorized by the health plan. This benefit is limited to 60 visits per medical episode per plan year. Covered in full.

BCN also had a medical policy entitled "Speech/Swallowing Therapy". This is one of a series of written medical policies which, as each policy indicates, "are developed to assist in administering plan benefits and constitute neither offers of coverage nor medical advice." These medical policies are not routinely issued to BCN members.

In justifying its denial of coverage, BCN cited its speech therapy policy but did not cite any specific provision of the policy. The coverage for speech therapy as stated in the Certificate is broadly worded in favor of coverage. The medical policy, on the other hand, contains numerous limitations that can severely limit coverage. These limitations are not even suggested or referenced in the Certificate, which is the only document a BCN member would normally see.

BCN has chosen to deny coverage solely on the provisions of its medical policy. That policy requires the resolution of medical questions such as determining medical necessity, determining what constitutes a chronic medical condition, and how Petitioner's speech difficulties do, or do not, relate to his Down syndrome. Yet in handling Petitioner's appeal through its internal grievance process, it does not appear that BCN conducted any review or analysis by a physician.

When the Commissioner is presented with medical issues in a PRIRA review, a medical analysis must be performed by an independent medical review organization (IRO). The IRO physician assigned to conduct the review in this case is certified by the American Board of Pediatrics with a subspecialty in pediatric critical care. The reviewer is a fellow of the American Academy of Pediatrics and is an attending physician and faculty member at a west coast children's hospital in its division of critical care. The reviewer recommended reversing BCN's denial of coverage. The IRO reviewer said:

> While Down syndrome may be considered a "chronic condition" because it is a genetic disorder that affects multiple systems and persists for the lifetime of the individual, the speech deficits that this child possesses are not chronic, and have been demonstrated to be amenable to speech therapy. Speech therapy is being used to treat expressive and receptive language deficits, reduced tone, and severe apraxia, not Down syndrome.

The reviewer noted the treatment Petitioner was receiving in school, but said that the Petitioner's needs exceed what can be provided in a large group setting such as is being provided in school. The reviewer stated that, while Down syndrome may be considered a chronic condition, the speech therapy was not to treat the Down syndrome but rather to treat Petitioner's speech deficits which, while common in Down syndrome individuals, are separate medical conditions which can also occur in individuals who do not suffer from Down syndrome.

The IRO reviewer concluded that the speech therapy is medically necessary and that Petitioner did meet the medical policy's standards for therapy.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded some deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b) The IRO's analysis is based on extensive expertise and professional judgment. The Commissioner can find no reason why that judgment should be rejected.

The Commissioner finds that BCN is required to provide coverage for Petitioner's speech therapy.

V
ORDER

The Commissioner reverses BCN's February 22, 2008, final adverse determination. BCN's shall authorize coverage for the speech therapy within 60 days of the date of this Order subject to any applicable deductibles, co-payments, or benefit limits. BCN shall, within seven days of providing coverage, provide the Commissioner proof it has implemented the Commissioner's Order. To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

_____
Ken Ross
Commissioner